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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,179	04/22/2004	Stuart L. Axelson JR.	OSTEONICS 3.0-488	7711
530 7590 02/27/2009 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER ARAJ, MICHAEL J	
			ART UNIT 3775	PAPER NUMBER
			MAIL DATE 02/27/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/830,179

Applicant(s)

AXELSON ET AL.

Examiner

MICHAEL J. ARAJ

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 April 2008.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9, 11, 12, 15, 16, 19, 20, 27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-12, 15, 16, 19, 27 and 28 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 11, 12, 27 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9, line 13 recites the limitation "said slot". There is insufficient antecedent basis for this limitation in the claim. It is unclear if the applicant means one particular slot or all of the slots include an inwardly facing end surface.

Claim 27, line 13 recites the limitation "said slot". There is insufficient antecedent basis for this limitation in the claim. It is unclear if the applicant means one particular slot or all of the slots include an inwardly facing end surface.

Claim 28, line 13 recites the limitation "said slot". There is insufficient antecedent basis for this limitation in the claim. It is unclear if the applicant means one particular slot or all of the slots include an inwardly facing end surface.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 11, 15, 19, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Zarnowski et al. (U.S. Patent No. 4,892,093).

Zarnowski et al. disclose a cutting block comprising a body (20) having a first generally planar contacting surface, a second surface spaced from said first bone contacting surface along an axis perpendicular to said generally planar bone contacting surface, said body having a perimeter surface extending between said first and second surfaces wherein at least a medial and a lateral perimeter surface of the body are curved along a plane parallel to the planar bone contacting surface and along a plane perpendicular to the bone contacting surface (refer to Figure 1 below). The body is used to resect a distal femur and includes a plurality of slots for guiding a saw blade, wherein the body includes slots for forming an anterior cut, a posterior cut, an anterior chamber cut and posterior chamfer cut in the distal femur and wherein the body is made of a plurality of pieces connected by pins (see Fig. 6). The slots includes an inwardly facing end surface extending from a bottom slot surface to a top slot surface at a location adjacent said perimeter surface of said body and wherein an end surface of said slot has an arcuate portion extending towards a center of said body. The pins are located at adjacent ends of said slots used cuts located adjacent a center of said slots.

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Said slots for forming said posterior cuts intersect said perimeter surface to form an open end (see Figure 1 below). The cutting block is less than or equal to a medial-lateral dimension of an outer perimeter of the distal femur and a height of said cutting block is less than or equal to an anterior-posterior dimension of the distal femur. The distal femur discussed can be a distal femur of an elephant.

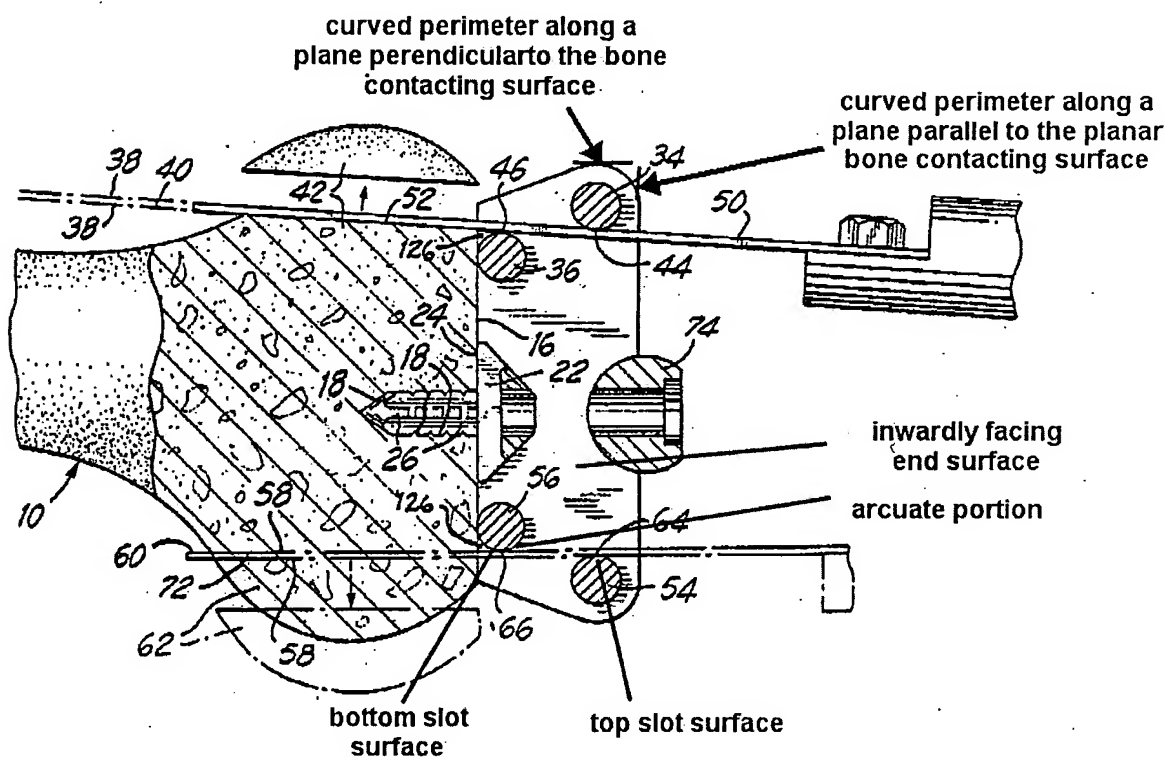


Figure 1

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zarnowski et al. (U.S. Patent No. 4,892,093) in view of Buttermilch et al. (U.S. Patent No. 6,585,771).

Zarnowski et al. disclose the claimed invention except for the perimeter surface being polished. Buttermilch et al. disclose the use of polished surfaces when dealing with bone to prevent additional damage to the bone (Column 2, Paragraph 4). It would have been obvious to one skilled in the art at the time the invention was made to have created the device of Zarnowski et al. with polished surfaces in view of Buttermilch et al., in order to have a device that can be used to cut the bone and eliminate further unwanted damage.

***Allowable Subject Matter***

Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Upon further examination of claim 28, it appears that the earlier allowed claims read on Zarnowski et al. as interpreted above.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. ARAJ whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Araj/  
Examiner, Art Unit 3775

  
SPE 3733